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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 ROSALIA RAZO,) Case No.: 1:21-cv-1802 JLT
12 Plaintiff,) ORDER GRANTING PLAINTIFF’S MOTIONS
13 v.) TO PROCEED IN FORMA PAUPERIS
14 KILOLO KIJAKAZI,) (Doc. 2)
15 Acting Commissioner of Social Security,) ORDER DIRECTING THE CLERK TO ISSUE
16 Defendant.) SUMMONS AND CASE DOCUMENTS, AND
) COMPLETE E-SERVICE
) ORDER STAYING THE ACTION

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18 Rosalina Razo seeks to proceed *in forma pauperis* with an action for judicial review of the
19 administrative decision denying an application for Social Security benefits. Pending before the Court
20 are the complaint and the motion to proceed *in forma pauperis*. For the following reasons, the Court
21 finds service of the complaint is appropriate.

22 **I. Proceeding in forma pauperis**

23 The Court may authorize the commencement of an action without prepayment of fees “by a
24 person who submits an affidavit that includes a statement of all assets such person . . . possesses [and]
25 that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). The Court
26 reviewed the financial status affidavit (Doc. 2) and finds the requirements of 28 U.S.C. § 1915(a) are
27 satisfied. Therefore, Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**.

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1 **II. Screening Requirement**

2 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
3 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
4 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
5 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim
6 is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
7 not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
8 25, 32-33 (1992).

9 **III. Pleading Standards**

10 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
11 pleading must include a statement affirming the court’s jurisdiction, “a short and plain statement of the
12 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may
13 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a). The purpose of the
14 complaint is to give the defendant fair notice of the claims, and the grounds upon which the complaint
15 stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

16 Rule 8 does not require detailed factual allegations, but it demands more than an
17 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
18 labels and conclusions or a formulaic recitation of the elements of a cause of action
will not do. Nor does a complaint suffice if it tenders naked assertions devoid of
further factual enhancement.

19 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
20 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
21 268 (9th Cir. 1982). The Court clarified further,

22 [A] complaint must contain sufficient factual matter, accepted as true, to “state a
23 claim to relief that is plausible on its face.” [Citation]. A claim has facial plausibility
24 when the plaintiff pleads factual content that allows the court to draw the reasonable
25 inference that the defendant is liable for the misconduct alleged. [Citation]. The
26 plausibility standard is not akin to a “probability requirement,” but it asks for more
than a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a
complaint pleads facts that are “merely consistent with” a defendant’s liability, it
“stops short of the line between possibility and plausibility of ‘entitlement to relief.’”

27 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
28 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal

conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

IV. Discussion and Analysis

Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability benefits. (Doc. 1.) The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides:

Any individual, after any final decision of the Commissioner made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of such decision or within such further time as the Commissioner may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business . . . The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.

Id. Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). The regulations “operate as a statute of limitations setting the time period in which a claimant may appeal a final decision of the Commissioner.” *Berrigan v. Astrue*, 2010 U.S. Dist. LEXIS 115390, at * 4-5 (E.D. Cal. Oct. 29, 2010) (citations omitted).

Plaintiff alleges the Appeals Council responded to a request for review of the decision denying benefits on July 14, 2021, at which time the decision of the administrative law judge became the final decision of the Commissioner. (Doc. 1 at 2.) Plaintiff reports she requested an extension of time to file a complaint, and a thirty-day extension was granted on November 23, 2021. (*Id.* at 1-2.) Thus, Plaintiff’s complaint was due no later than December 23, 2021. Because Plaintiff initiated this action by filing a complaint prior to that date, the request for judicial review was timely under 42 U.S.C. § 405(g).

V. Conclusion and Order

Plaintiff’s complaint states a cognizable claim for review of the administrative decision denying Social Security benefits. Based upon the foregoing, the Court **ORDERS**:

1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
2. The Clerk of Court is **DIRECTED** to issue summons as to Kilolo Kijakazi, the Acting

4. The Clerk of Court **SHALL** deliver to the Commissioner of Social Security Administration and the United States Attorney's Office at their designated email addresses a notice of electronic filing of the action along with the summons and complaint. The Commissioner has agreed not to raise a defense of insufficient service of process if provided with notice of a complaint as detailed in this order.

IT IS SO ORDERED.

 /s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE